
Governance Committee: Constitutional Matters

Review of the Fire and Rescue Service Scrutiny Committee

Background and context

- 1** In December 2019, the County Council agreed to establish a new committee dedicated to the scrutiny of the Fire and Rescue Service, for review after two years. Prior to this, scrutiny of the service was carried out by the then Environment, Communities and Fire Select Committee. The change was driven by a need to improve the transparency of the Council's governance of its Fire and Rescue functions following an inspection by Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS).
- 2** The Fire & Rescue Service Scrutiny Committee first met in June 2020 and has met 10 times since then. It has scrutinised key service issues, including the Fire and Rescue Service improvement plan, focusing on the causes of concern identified in the inspection. It has also focused on continuous performance management, through scrutiny of the Fire and Rescue Service Performance and Assurance Framework. Other topics scrutinised include preview of the Statement of Assurance and input into the Community Risk Management Plan. Members of the Committee have been able to develop in-depth service knowledge.
- 3** The Committee has had two task and finish Groups (TFGs), on the Joint Fire Control Centre and the recruitment and retention of retained firefighters. It has also worked with the Performance and Finance Scrutiny Committee on a joint TFG regarding the planned Horsham Fire Station and Training Centre.
- 4** In early 2022, HMICFRS reinspected the West Sussex Fire and Rescue Service and its report confirms that the new governance arrangements ensure that the Service's decision-making can now be challenged in a more transparent, robust and informed way, following the establishment of the Committee.
- 5** In July 2022, the Cabinet agreed its response to the Government Fire Reform White Paper consultation. This included a section on governance, with various options for executive responsibility for the Fire and Rescue Service. Each option included the expectation that there should be a dedicated scrutiny panel. The Cabinet agreed a response that supports the continuation of the current approach.

Proposal details

- 6** Consultation carried out as part of the two-year review of the Committee did not support any change to the current arrangements. The Committee is working well and within the resources identified. It is therefore proposed that the current arrangements for scrutiny of the Fire and Rescue Service should continue.

Recommended

- (1)** That the continuation of the current arrangements for scrutiny of the Fire and Rescue Service be approved;

Report of the Independent Remuneration Panel

Background and context

- 7** The Member Allowances Regulations 2003 require all local authorities to maintain an Independent Remuneration Panel which should review the allowance scheme from time to time and make recommendations to the local authority. A Panel must do so around every four years. The current County Council scheme was approved in 2020 following a full review and took effect from May 2021.
- 8** The Council's Independent Remuneration Panel (IRP) has met twice in 2022 to consider initial observations and feedback on the Members' Allowances Scheme after a year of this Council's term. It has advised the Governance Committee that no interim review of the scheme is required in 2022 but has identified some areas to include in its quadrennial review, which will begin in 2023.
- 9** The Panel has also considered its membership term limits as two members' terms of office will expire in October 2023 and has made a recommendation, endorsed by the Governance Committee, that a third term should be provided for.

Proposal details

- 10** The Regulations do not impose any particular term limits. The County Council established the current two four-term limit (up to eight years in total) to encourage a staggering of membership to retain continuity.
- 11** Independent co-opted members of other committees have recently been granted a three four-year term limit, i.e. up to 12 years in total. This is the case for Regulation, Audit and Accounts Committee, the Pensions Committee and the Pensions Advisory Board. The Governance Committee supports the Panel's recommendation that this provision be applied to the Independent Remuneration Panel. One of the two members whose term of office is due to expire in October 2023 has indicated that he would be willing to serve a third term.

Recommended

- (2) That the term of office for members of the Independent Remuneration Panel, as set out in Part 3, Appendix 13 of the Council's Constitution, be amended from a maximum of two four-year terms to a maximum of three four-year terms;

Property Joint Venture Partnership governance arrangements

Background and context

- 12** In June 2019 the then Cabinet Member for Finance and Resources approved a decision for the County Council to enter into a joint venture with a commercial partner for the shared development of land in the Council's ownership. In March 2021 the Council completed the procurement of a commercial partner and the joint venture partnership started.
- 13** The arrangement is a 'Public-Private Partnership' where the Council and the commercial development company are equal 50:50 partners in the partnership. The Council will provide land for development and, if appropriate, funding. The commercial partner will provide expertise, resources, innovation and funding to

deliver developments identified. The success of the arrangement relies on the use of a commercial entity which operates at arm's length from the County Council to work within the partnership. This will enable the partnership to operate commercially in a way that maximises the financial returns from surplus land that is made available to it by the County Council.

- 14** The aim is to promote a commercial return for the long term benefit of the Council. In order to avoid any concern that the County Council would be directly undertaking commercial activity the decision was taken to create a wholly owned company to enter into commercial arrangements with the partner. This ensures that the arrangement is fully operating within a company commercial environment. It enables that company to take commercial decisions quickly within the constraints of the overall principles and aims imposed by the County Council which will remain the sole shareholder. This enables the joint venture partnership to proceed with schemes and initiatives in a more timely and effective way.
- 15** The company used by the County Council called Edes Estates Limited was already established but its articles of association and constitution have been revised to meet the requirements of the joint venture. The requirement is for these arrangements to be fully recorded within the Council's constitution to reflect how the Company will act on behalf of and in the interests of the County Council.
- 16** The actions of the Cabinet Member for Finance and Property and in decisions directed at the operation of the company and the joint venture are subject to scrutiny by the Performance and Finance Scrutiny Committee.

Proposal details

- 17** The County Council will ensure that any commercial activities undertaken on its behalf in relation to property under its control take place at arm's length through an independent company operating in accordance with company law and the financial regime applicable to a commercial company. The Council's company, registered at Companies House, Edes Estates Limited, will act as the partner in the joint venture in accordance with previous executive decisions.
- 18** The company's articles of association restrict its activities to those related to land under the control of the County Council and the activities required for the aims of the joint venture as set by the County Council. The company is and will remain wholly owned by the County Council. Its Board will comprise officers of the Council at a senior level with direct expertise in the relevant field and who will be required to discharge the business of the company in accordance with company law and in order to meet the aims identified by the County Council.
- 19** In accordance with company law the company's activities will be directed by a 'shareholder group'. As the County Council is the sole shareholder of the company this means that the Cabinet Member for Finance and Property will be the decision-maker on behalf of the County Council as the 'shareholder group' advised by senior officers, but not those acting as officers of the company.
- 20** All transactions, including funds which may be made available to the company by the County Council, will take place on a fully commercial basis. The company will account to the County Council for its activities through the shareholder group – to the Cabinet Member for Finance and Property who will take any decisions related to property under the Council's control in the usual way and those together with

any decisions to declare land surplus to service requirements will be subject to all the usual council governance and scrutiny. In the event that any land is transferred to the company for the purposes of the joint venture any decisions and actions will be taken by the company and in accordance with the governance and legal requirements of the company.

- 21** To provide transparency to these arrangements the Council's scheme of delegation needs to be amended to include explanations for how the responsibilities of cabinet member, officers and the wholly owned company are discharged and how the interests of the County Council as the sole owner of the company are safeguarded. The proposals are **set out at Appendix 1. Set out at Appendix 2** is a consequential recommendation to the Leader to add the governance arrangements to the list of portfolio responsibilities for the Cabinet Member for Finance and Property.

Recommended

- (3) That the proposed changes to Appendix 3 and the new Appendix 22 of Part 3 of the Constitution, as set out at Appendix 1, be approved;
- (4) That the Leader be recommended to add the role of the Cabinet Member for Finance and Property in the governance arrangements to the list of portfolio responsibilities in Part 3, Appendix 2 of the Constitution, as set out at Appendix 2;

Pension Advisory Board and Pensions Committee matters

Background and context

- 22** The Pension Advisory Board, in accordance with a statutory requirement, provides scrutiny of the work of the Pensions Committee and of the Council's role as scheme administrator.
- 23** A member of the Board has recently been appointed as a representative member on the Pensions Committee and resigned from the Board upon his appointment to avoid any perception of a conflict of interests. In light of this it is recommended that the County Council's Constitution be amended to make it a requirement that no person can, at the same time, be a member of both the Board and the Pensions Committee and must resign in the event that they are appointed to one whilst a member of the other.
- 24** The Cabinet Member with responsibility for the Finance portfolio has always been treated as ex-officio Chairman of the Pensions Committee since the introduction of political management changes in the year 2000. The opportunity is taken to set out this long-standing convention in the constitution of the Pensions Committee.

Proposal details

- 25** A proposed amendment to Part 3, of the Constitution, Appendix 19, paragraph 18, the section which sets out the circumstances in which a Board member will resign or cease to be eligible, is **set out at Appendix 3**.
- 26** To cover the possibility of a member of the Pensions Committee seeking and gaining appointment to the Advisory Board a parallel change is needed to cover the terms of reference of the Pensions Committee for representative members, in

Part 3, Appendix 7 which is also set out at Appendix 2. The opportunity is also taken to standardise the wording around reappointments to make it consistent with the equivalent wording for the Pensions Advisory Board.

- 27** It is proposed that the long-standing convention for the Cabinet Member with responsibility for the finance portfolio to be ex-officio Chairman of the Pensions Committee be set out in Part 3, Appendix 7, as set out at Appendix 3. It is also recommended that the Leader makes a corresponding clarification in Part 3, Appendix 2, under the list of Cabinet Portfolios. This is **included in Appendix 2**.

Recommended

- (5) That that Part 3, Appendices 7 and 19 of the Council's Constitution be amended, as set out at Appendix 3, to state that no person may be a Board member and also a member of the Pensions Committee or vice versa;
- (6) That the constitution of the Pensions Committee in Part 3, Appendix 7, be amended, as set out at Appendix 3, to show that the Cabinet Member with responsibility for the Finance portfolio is ex-officio Chairman of the Pensions Committee;
- (7) That the Leader be recommended to amend the portfolio responsibilities of the Cabinet Member for Finance and Property in Part 3, Appendix 2, as set out at Appendix 2;

Urgent and short notice decisions

Background and context

- 28** There is a presumption that the decision-making processes of local authorities will be transparent. They include public notice of intended key decisions. There are occasionally exceptional circumstances where decisions need to be taken quickly and where the usual processes and timescales cannot be followed. Local authorities have provisions for taking urgent or short notice decisions in line with national regulations, guidance and best practice.
- 29** Part 4, Section 1 of the County Council's Constitution contains the Standing Orders which set out the way in which decisions must be taken. The Standing Orders for urgent and short notice decisions are set out in two sections of Standing Orders, Part 3 on committee decision making in general and Part 5 on Executive decision making.
- 30** The text has been altered over time and the current wording is causing confusion and uncertainty. An officer review has concluded that it would be helpful to simplify and reorder the text, to be combined in one place in Part 3 of Standing Orders. No changes to the arrangements are proposed.

Proposal details

- 31** The proposed new wording on urgent and short notice decisions is in **Appendix 4**. It does not change the substance of any of the existing provisions but sets them out more coherently and with clearer language. The opportunity has also been taken to remove references to the former Executive Decision Database (EDD) which has been replaced by the publication of all decisions on the 'Decisions' page on the County Council's website. Again these are set out at **Appendix 4**.

Recommended

- (8) That Part 4, Section 1 of the Constitution be amended with new wording on urgent and short notice decisions and removal of references to the Executive Decision Database, as set out at Appendix 4;

Stopping Up Orders

Background and context

- 32** Stopping-Up order applications are usually associated with highways transport and planning matters. There has recently been an increase in the number associated with public rights of way. The Delegation Code of Practice for Public Rights of Way does not include reference to how delegated decisions on stopping up order applications are to be taken by officers and it is proposed to correct this.

Proposal details

- 33** It is proposed that applications for the stopping up of public rights of way are dealt with in the same way as public path orders. New proposals will be reported in the Bulletin and will not be taken forward for 21 days. Any local member wishing to do so must express a view within 21 days and if there is disagreement with the officer recommendation the matter will be referred to the Planning and Rights of Way committee. Objections from consultees such as district and parish councils and substantive objections from the public will also bar the delegation to officers. The changes are **set out at Appendix 5**.
- 34** It is also proposed to clarify the position for delegation in relation to stopping-up applications that arise through the Highways and Transport teams. Applications will follow the same notification process as those followed for traffic regulation matters. The changes are also shown in Appendix 5.

Recommended

- (9) That the changes to Part 3, Appendix 4 of the Council's Constitution relating to stopping up order applications, as set out at Appendix 5, be approved.

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Chairman of Governance Committee

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Appendices

- Appendix 1 - Joint Venture Partnership governance arrangements
- Appendix 2 – Recommendation to the Leader for changes to the portfolio of the Cabinet Member for Finance and Property
- Appendix 3 - Pension Advisory Board and Pensions Committee matters
- Appendix 4 - Urgent and short notice decisions
- Appendix 5 - Stopping Up Order Applications

Background papers: None